



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 12, 1998

Mr. Madison Jechow
Bickerstaff, Heath, Smiley,
Pollan, Kever & McDaniel
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR98-0431

Dear Mr. Jechow:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 112817.

Austin Community College (the "college"), which you represent, has received a request for various information relating to the solicitation and acceptance of proposals for RFP # 97-772-A. You claim that the requested information is excepted from required public disclosure by sections 552.103, 552.104 and 552.110 of the Government Code. We have considered the exceptions you claim and have reviewed the documents you have submitted.

Section 552.104 protects from required public disclosure "information which, if released, would give advantage to competitors or bidders." Section 552.104 is generally invoked to except information relating to competitive bidding situations involving specific commercial or contractual matters. Open Records Decision No. 463 (1987). Governmental bodies may withhold bid information while governmental officials are in the process of evaluating the proposals and asking competitors to clarify their bids. Open Records Decision No. 170 (1977). Section 552.104 does not, however, except bids or proposals from disclosure once the bidding is over and the contract is in effect. Open Records Decision Nos. 306 (1982), 184 (1978).

You explain that the college is reviewing proposals for the management of its Riverside golf course. You argue that if the requested documents are released prior to the execution of a contract, the college will be unable to negotiate more preferable terms in the ensuing contract negotiations. We have previously held that so long as negotiations are in progress regarding the interpretation of bid provisions, and so long as any bidder remains at

liberty to furnish additional information relating to the proposed contract, bidding should be deemed competitive and therefore, information relevant thereto may be withheld under section 552.104 prior to the award of the contract. Attorney General Opinion MW-591 (1982); Open Records Decision No. 170 (1977); *see* Open Records Decision No. 541 (1990). Therefore, you may withhold the college's internal evaluations sheets and the submitted proposals under section 552.104 at this time.

Because we are able to make a determination under section 552.104, we do not address your additional arguments against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/glg

Ref.: ID# 112817

Enclosures: Submitted documents

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